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IN THE

Supreme Court of the United States

OCTOBER TERM, 1924. 1925

No. [redacted] 254

JOSEPH P. MARGOLIN,
Petitioner,

—against—

UNITED STATES OF AMERICA,
Respondent.

PETITION AND BRIEF FOR A WRIT OF CERTIORARI.

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IN THE

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OCTOBER TERM, 1924.

JOSEPH P. MARGOLIN,
Petitioner,

—against—

UNITED STATES OF AMERICA.

No.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

TO THE HONORABLE, THE CHIEF JUSTICE, AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The petitioner submits his petition for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit to review a judgment of that Court in the above entitled cause.

STATEMENT OF THE CASE.

The petitioner, an attorney at law, was convicted in the District Court of the United States for the Southern District of New York for charging a fee in excess of $3.00 "in the preparation and presentation to the United States Veterans Bureau of an affidavit" (Indictment Tr., fol. 3), executed

by a beneficiary under a War Risk Insurance Policy, in violation of the Act of May 20th, 1918, 40 Stat. 555, Barnes Fed. Code Sec. 10264. The Circuit Court of Appeals for the Second Circuit while assuming that the professional work of the petitioner was "of substantial service in procuring an allowance of Yetta Cohen's claim, and under any appraisal was worth many times the sum of $3.00." (Tr., fol. 293), affirmed the judgment of conviction. The Circuit Court of Appeals adopted the view of the trial Judge that the statute not only prohibited the petitioner from receiving more than $3.00 for actually preparing and executing the claim papers, but also prohibited him from receiving any fee in excess of $3.00 for whatever professional services were rendered in establishing the existence and validity of the client's claim.

This decision is in direct conflict with the construction of the statute announced by the District Court of the United States for the Northern District of West Virginia in the case of *United States vs. Rodgers*, entered on or about November 14th, 1922, at Elkins, West Virginia, unreported, where the Court directed a verdict of acquittal on the ground that the criminal prohibition of the statute against receiving a greater sum than $3.00 applied solely to the clerical work of filling in the affidavit of claim, and did not apply to a case where elaborate and important investigation work was necessary to establish the existence and validity of the claim.

That the restriction against the receipt by an attorney of a greater sum than $3.00, *set forth in the statute, applies solely to the clerical work of filling out the forms or affidavit of claim appears undisputably from the communication of the Secretary of Treasury, and the report of the House Committee on Interstate and Foreign Commerce, No.*

471, 65th Congress, which was adopted by the report of the Senate Committee, No. 429, 65th Congress, in recommending passage of the bill H. R. 11245, which became the statute now under consideration.

We have set forth in detail, in the brief submitted herewith, the history of this legislation. The House report, *supra*, says:

> "As a fee for the preparation of papers which the bureau will send these people, the Committee has fixed the maximum fee of $3.00 which we believe is ample for the work that is necessitated in filling out these papers."

Unfortunately, these documents were not brought to the attention of the trial Judge or the Circuit Court of Appeals by the petitioner's former attorney. The petitioner's present attorney was not retained until after the time prescribed for an application for a re-hearing in the Circuit Court of Appeals had elapsed, and he therefore could not submit these documents to the consideration of that Court.

Indictments are now pending against numerous other members of the bar for violations of this statute. In addition to the penalties contained in the statute, these defendants further are subject to possible disciplinary proceedings by Bar Associations.

THE QUESTIONS INVOLVED.

1. Is it a criminal offence under the Act of May 20th, 1918, 40 Stat. 555, for an attorney at law to receive a fee greater than $3.00, for professional services rendered by him, irrespective of quantity, difficulty, and utility, to investigate and

establish the existence and validity, without resort to court proceedings, of a War Risk Insurance claim? Or does the criminal prohibition in the statute against receiving a greater sum than $3.00 pertain solely to the clerical work in connection with filling out the papers or forms of claim?

2. Is a statute which is construed so as to render criminal the receipt by an attorney at law of a greater sum than $3.00 for professional services rendered by him, irrespective of quantity, difficulty, and utility, to investigate and establish the existence and validity of a War Risk Insurance claim, without resort to court proceedings, unconstitutional as an arbitrary and unreasonable restriction upon the right of an attorney at law to receive compensation for the enforcement of the right of a client under a contract of insurance, and not in the collection of a bounty, pension, gift, gratuity, or any other donation by the United States?

THE FACTS.

The petitioner, an attorney at law, was convicted of a violation of the Act of May 20th, 1918, 40 Stat. 555, for receiving a sum in excess of $3.00 for services performed by him "in the preparation and presentation to the United States Veterans Bureau of an affidavit" executed by a beneficiary under a War Risk Insurance Policy (Tr., fol. 3). The professional services rendered by the petitioner included numerous conferences, communications, a trip to Washington, elaborate investigation there, and the discovery of the proof necessary to establish and recover a claim for $9,000.00 in a case where the insured had been dead for more than four years. The compensation for professional services likewise

included railroad expenses, hotel expenses, and miscellaneous disbursements. The fee was fixed on a contingent basis, with no recovery if no successful result was attained.

It was conceded by the government upon the trial, that the petitioner's client, an aunt of the insured, did not know positively, at the time she engaged the petitioner, whether the insured had died (Tr., fol. 126). It was undisputed that the petitioner was engaged by the client prior to the preparation of an affidavit (Tr., fol. 185); that petitioner went to Washington at the client's request (Tr., fol. 196); that nothing was charged by petitioner for the mere filling in of the details of the affidavit (Tr., fol. 208); and that the petitioner did not take the acknowledgment of the papers (Tr., fol. 209).

REASONS FOR GRANTING THE PETITION.

It is submitted that the petitioner is entitled to a writ of certiorari requested because of the following reasons:

1. There is no authoritative decision of this Court as to the true meaning of the statute, under which the petitioner stands convicted of crime.

2. There is a conflict of decisions, in the lower Federal Courts as to the true meaning of the statute.

3. The House and the Senate reports accompanying the bill which resulted in the amendment of the law, under which these proceedings were brought, clearly establish that the trial Court and the Circuit Court of Appeals for the Second Circuit have erroneously construed this statute in declaring criminal the charging of a greater sum than $3.00

for any investigation and preliminary work necessary to establish the existence and validity of a claim.

4. The contrast in the language between prior statutes and the statute, under which these proceedings were brought against the petitioner, clearly portrays the error of the trial Judge and the Circuit Court of Appeals for the Second Circuit.

5. The statute limits the fee for service "herein provided" but does not make criminal the charging of a greater fee than $3.00 for services not "herein provided." Services for elaborate and successful investigation and preliminary work are not provided for in the statute, and are not within the criminal prohibition of the Act.

6. The indictment of the petitioner is based upon charging and soliciting fees "for the preparation and presentation to the United States Veterans Bureau of an affidavit." The proof of charges, therefore, for prior and different services and the absence of proof that the fee was received for the clerical work in filling out the form cannot support a verdict of guilty under this particular indictment.

7. The case is of especial importance and gravity because petitioner is an attorney at law, and in addition to the criminal penalties imposed under the statute, there may be, in addition, disciplinary proceedings by bar associations against the petitioner, because of his conviction of crime against the United States.

8. The questions raised involve pending prosecutions against numerous other attorneys at law throughout the country arising under this statute.

9. The important question of the constitutionality of the statute. If it is construed so as to render criminal the receipt by an attorney of a greater sum than $3.00 for professional services, irrespective of quantity, difficulty, and utility, to establish the existence and validity of a War Risk Insurance claim, it is an arbitrary restriction upon the right of an attorney to receive compensation for the enforcement of the right of a client under a contract of insurance, and not in the collection of a bounty, pension, gift, gratuity, or other donation by the United States.

There is presented herewith as part of this petition a brief, annexed hereto and made part hereof, and a certified transcript of the record in the Circuit Court of Appeals.

WHEREFORE, petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this court, directed to the Circuit Court of Appeals for the Second Circuit, commanding that Court to certify and send to this Court, on a day certain to be therein designated, a full and complete transcript of the record and all proceedings of the said Court of Appeals in this cause, to the end that the said cause may be reviewed and determined by this Court as provided by law, and that the judgment of said Circuit Court of Appeals in this Court may be reversed by this Court, and that the petitioner may have such other and further relief in the premises as to this Court may seem just and proper. And the petitioner will ever pray.

BENJAMIN S. KIRSH,
Attorney for Petitioner.

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

BENJAMIN S. KIRSH, being duly sworn, says: That he is the attorney for the petitioner herein, that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated to be alleged on information and belief and as to those matters he believes it to be true.

BENJAMIN S. KIRSH.

Sworn to before me this
21st day of January, 1925.

LILLIAN POPKIN,
Notary Public Bronx County No. 67,
N. Y. Co. Clerk's No. 424, Reg. No. 6304,
Term Expires March 30, 1926.

BRIEF.

The material portion of the statute, Act of May 20th, 1918, 40 Stat., Part I, Page 555, as amended, reads as follows:

> "Sec. 13. That the director, subject to the general direction of the Secretary of the Treasury, shall administer, execute, and enforce the provisions of this Act, and for that purpose have full power and authority to make rules and regulations not inconsistent with the provisions of this Act, necessary or appropriate to carry out its purposes, and shall decide all questions arising under the Act, except as otherwise provided in section five. Wherever under any provision or provisions of the Act regulations are directed or authorized to be made, such regulations, unless the context otherwise requires, shall or may be made by the director, subject to the general direction of the Secretary of the Treasury * * * *Provided, however*, That payment to any attorney or agent for such assistance as may be required in the preparation and execution of the necessary papers shall not exceed $3 in any one case: *and provided further*, That no claim agent or attorney shall be recognized in the presentation or adjudication of claims under articles two, three, and four, except that in the event of disagreement as to a claim under the contract of insurance between the bureau and any beneficiary or beneficiaries thereunder an action on the claim may be brought against the United States in the District Court of the United States in and for the district in which such beneficiaries or any one of them resides, and that whenever judgment shall be rendered in an action

brought pursuant to this provision the Court, as part of its judgment, shall determine and allow such reasonable attorney's fees, not to exceed five per centum of the amount recovered, to be paid by the claimant in behalf of whom such proceedings were instituted to his attorney, said fee to be paid out of the payments to be made to the beneficiary under the judgment rendered at a rate not exceeding one-tenth of each of such payments until paid.

Any person who shall, directly or indirectly, solicit, contract for, charge, or receive, or who shall attempt to solicit, contract for, charge, or receive any fee or compensation, except as herein provided, shall be guilty of a misdemeanor, and for each and every offense shall be punishable by a fine of not more than $500 or by imprisonment at hard labor for not more than two years, or by both such fine and imprisonment.

Sec. 2. That Article IV of said Act, approved October sixth, nineteen hundred and seventeen, entitled 'An Act to authorize the establishment of a Bureau of War Risk Insurance in the Treasury Department,' is hereby amended by striking out section four hundred and five thereof."

I.

THE REPORTS OF THE HOUSE AND SENATE COMMITTEES ACCOMPANYING THE BILL PRIOR TO ENACTMENT, AND THE COMMUNICATION OF THE SECRETARY OF THE TREASURY, INCORPORATED THEREIN, ESTABLISH BEYOND DOUBT THAT THE LIMITATION OF $3.00 "FOR SUCH ASSISTANCE AS MAY BE REQUIRED IN THE PREPARATION AND EXECUTION OF THE NECESSARY PAPERS" APPLIES ONLY TO THE CLERICAL WORK OF FILLING OUT A FORM. THE TRIAL JUDGE AND THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT THEREFORE ERRONEOUSLY CONSTRUED THE PROVISIONS OF THE ACT IN DECIDING THAT A GREATER CHARGE THAN $3.00 FOR USEFUL, ELABORATE, AND SUCCESSFUL INVESTIGATION AND PRELIMINARY PROFESSIONAL SERVICES WERE WITHIN THE CRIMINAL PROHIBITIONS OF THE STATUTE.

We respectfully submit that the construction placed upon the Act, under which the petitioner was convicted, by the Circuit Court of Appeals and by the District Judge in his last charge to the jury, was erroneous. A careful reference to the circumstances dealing with the amendment of the prior law, which resulted in the Act under consideration, will reveal the necessity for the amendment, the presence of the language containing the limitations of a fee, and the intention of the law makers with respect to the activity prohibited thereunder.

Section 13 of the Act of May 20th, 1918, was amended to meet the pressing need for legislation to curb a definite practice which was becoming scandalous. Under Section 13, Article 1, and Section 405 of the Act of October 6th, 1917, the prior

Act, there was a restriction merely as to the amount of recovery. No sum greater than 10% was to be paid to claim agents and attorneys for services in connection with the matters dealing with allotments for family allowances, compensation for death or disabilty, and insurance.

Under Section 405 of that Act, in the event of a disagreement as to a claim, an action was to be brought in the United States District Court, and the Court as part of its judgment was to determine and allow such reasonable attorneys' fees, not to exceed 10% of the amount recovered. The law as it then stood did not contain any effective prohibition against a practice of unscrupulous attorneys of exacting the sum of 10% of the recovery in cases where only forms were filled out and presented. Certain attorneys did not hesitate to scan the soldier death lists published in the daily papers, and to solicit War Risk Insurance claims from parents and relatives, who were beneficiaries under the insurance of the deceased soldier. The impression was fraudulently given by these attorneys that it was necessary for the claimants to employ attorneys to prosecute their claims. The practice was becoming so prevalent that the necessity of curbing the exaction of the sum of 10% for the mere filling in of a form, in cases where there was no question of the death of the soldier and no dispute of the right of the beneficiary to recover under the policy, was brought before Congress. The necessity and purposes of the amendment to the law as it then stood appear plainly in the letter of the Secretary of Treasury, Mr. McAdoo, to Mr Simms, Chairman of the House Committee on Interstate and Foreign Commerce, which is incorporated in the House and Senate reports accompanying the bill, H. R. 11245. The House Report bears

No. 471, 65th Congress, Second Session, and the Senate Report bears No. 429, 65th Congress, Second Session.

Portions of Mr. McAdoo's communications are as follows:

> "* * * proposed amendment of the War Risk Insurance Act is designed to circumvent sharks who are already seeking to prey upon the beneficiaries," and
>
> "Unscrupulous attorneys and claim agents are circularizing prospective claimants with literature in which they seek to neutralize the warnings of the department by their assertions that their employment will facilitate the prompt allowance of claims.* * * *They are seeking to mulct the unwary out of hundreds of dollars for services that are either entirely unnecessary or would be amply remunerated by a nominal fee.*" (Italics ours.)

In the House Report accompanying the bill, and following the letter of the Secretary of the Treasury, there appears the following statement of the Committee in charge of its passage. It clearly demonstrates the meaning of the language in the statute under consideration:

> "Provided, however, that payment to any attorney or agent for such assistance as may be required in the preparation and execution of the necessary papers shall not exceed $3.00 in any one case refers solely to the filling in of the forms and does not apply to preparation in the sense of investigation or building up the case for presentation."

applies only to the clerical service of filling out the form.

The House Report 471, *supra*, which was adopted by the Senate Report 429, *supra*, contains the following significant language which clearly indicates the intent of Congress. In restricting the charge of $3.00 to mere clerical work and not to extensive, elaborate, and important work as to whether the claim exists, the report says:

> "They find out the name of a soldier who has died or who has been killed, and immediately take up with the family the question of appearing before the Bureau in order that their claim may be adjusted and at the same time creating the impression that it is necessary for these people to employ an attorney and pay him 10% of all that is recovered. *As a fee for the preparation of papers which the bureau will send these people, the Committee has fixed a maximum fee of $3.00 which we believe is ample for the work that is necessitated in filling out these papers.* If the case goes to court, the amendment follows the language to some extent, as in Section 405, Article 4 of the original Act, which allows the Court to place a fee for an attorney at 10% out of the amount recovered as the maximum." (Italics ours.)

II.

THE PROPER CONSTRUCTION OF THE STATUTE IS ANNOUNCED IN UNITED STATES vs. RODGERS, IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF WEST VIRGINIA, THAT THE CRIMINAL PROHIBITIONS AGAINST CHARGING A GREATER FEE THAN $3.00 APPLIES ONLY TO THE CLERICAL WORK OF FILLING OUT THE AFFIDAVIT OF CLAIM. UNDER A STRICT CONSTRUCTION, THE WORDS IN THIS PENAL STATUTE "EXCEPT AS HEREIN PROVIDED" APPLY SOLELY TO THE CASES OF FILLING OUT THE FORM OR RESTRICTION OF COMPENSATION IN CASE OF SUIT.

The opinion of Judge Baker filed on the 14th day of November, 1922, in the District Court of the United States for the Northern District of West Virginia, which we do not find reported, is at variance with the views of the trial Judge and Circuit Court of Appeals for the Second Circuit. We submit, however, that that is the sound and proper construction of the statute. We quote from his clear and forceful opinion:

> "It is contended by the government that in only two cases are attorneys authorized to charge or receive fees in connection with their services in collecting claims against the Bureau of War Risk Insurance. They are, according to the government's contention: (1) a charge of $3.00 for 'such assistance as may be required in the preparation and execution of the necessary papers'; and (2) where there is a disagreement between the beneficiary and the bureau and a suit is brought and judgment rendered. In the latter case it becomes the duty of the trial Judge to ascertain and fix by an

order, as a part of his judgment, a reasonable compensation for prosecuting the suit not to exceed five per cent. The government contends that in no other case; under no other conceivable conditions; and for no other services than those two cases is an attorney entitled to charge or receive any compensation, and that in those two cases he cannot receive a greater compensation than the amounts specified. With the latter contention, I agree, but I cannot bring myself to the conclusion that Congress intended any such result as to the cases not specifically enumerated therein. Certainly the language of the first paragraph of Section 10264 does not so indicate.

But, says the government, the last paragraph in plain terms forbids it. The language of the last paragraph is 'Any person who shall directly or indirectly solicit, contract for, charge or receive, or who shall attempt to solicit, contract for, charge or receive any fee or compensation, *except as herein provided* shall be guilty,' etc. The government says that by this language Congress has forbidden any charge whatever except in the two cases indicated.

If we take this paragraph literally (assuming it to be constitutional), and give full effect to the construction contended for by the government, Congress has forbidden any and all attorneys' charges in any and every conceivable case except the two referred to. This of course is absurd, and it will then be contended that as this paragraph is in the statute relating to War Risk Insurance, its scope is to be understood only as limiting charges for the collection of War Risk Insurance claims. The answer is that the statute itself does not so state. *It does not say that no person shall 'directly or indirectly solicit, contract for, charge or receive*

** * * any fee or compensation for services in the collection of claims against the Bureau of War Risk Insurance except as herein provided'; and to give it that effect we must read into the paragraph something that is not there. This is a criminal statute; it must be strictly construed. There is no such thing as a statutory crime unless the acts constituting it are specifically stated in the statute and punishment is prescribed. I cannot find in this statute anything indicating an intention on the part of Congress to forbid charges except in the two cases above specified. The only thing forbidden by this statute is a charge for the particular services therein specified in excess of the limitations therein fixed."* (Italics ours.)

And again,

"But I do not think it necessary to base my conclusion in this case solely on technical rules of construction, even though such technical rules make irresistible the conclusion I have reached. *I cannot conceive that Congress; doubtless anticipating the thousands and thousands of cases that would arise under this War Risk Insurance Act; foreseeing that infinite complications would be inevitable; realizing the utter helplessness in many cases of the beneficiaries and the imperative need that they would or might have for persons trained as lawyers are trained, and skilled as lawyers are skilled; that the Congress of the United States would not only so hamper beneficiaries but would for all practical purposes deny to them the services of attorneys by making it unlawful for them to agree to pay their attorneys a greater compensation than $3.00 no matter how great their labor; no matter how difficult the*

services rendered; no matter how many personal visits to the bureau were necessary; no matter how successful their efforts. If it be contended that this statute was enacted to protect beneficiaries from excessive charges by unscrupulous attorneys, a moment's reflection will convince that the evils that would result from such a construction are infinitely greater than the evils that that same construction would inhibit." (Italics ours.)

III.

THE STATUTE AUTHORIZES AND EMPOWERS THE DIRECTOR OF WAR RISK INSURANCE TO MAKE RULES AND REGULATIONS NOT INCONSISTENT WITH THE PROVISIONS OF THE ACT. THE SOLE TWO LIMITATIONS UPON HIS POWER OF ANNOUNCING SUCH RULES AND REGULATIONS ARE THE MAXIMUM SUM OF $3.00 FOR FILLING OUT THE AFFIDAVIT OF CLAIM AND A MAXIMUM OF 5% OF THE AMOUNT RECOVERED IN THE EVENT OF A TRIAL. THE LANGUAGE OF THE STATUTE "THAT NO CLAIM AGENT SHALL BE RECOGNIZED IN THE PRESENTATION OR ADJUDICATION OF CLAIMS" REFERS CLEARLY TO THE PRESENTATION OF AN AFFIDAVIT OF CLAIM OR AN ADJUDICATION PURSUANT TO A SUIT BROUGHT IN THE DISTRICT COURT OF THE UNITED STATES. THE CRIMINAL PROHIBITION AGAINST RECEIVING ANY FEE "EXCEPT AS HEREIN PROVIDED" CLEARLY REFERS TO THE LIMITATION OF $3.00 FOR FILLING OUT THE FORM AND THE MAXIMUM 5% OF THE AMOUNT RECOVERED IN CASE OF TRIAL.

We respectfully submit that this criminal statute must be strictly construed and cannot be extended

by implication to include cases not plainly, clearly, and indisputably within its prohibitions.

The very wording of the section authorizes and empowers the Director of War Risk Insurance to make rules and regulations not inconsistent with the provisions of the Act. He is restricted in making such rules and regulations only in the two instances of the maximum sum of $3.00 for filling out the affidavit of claim and a maximum of 5% of the amount recovered in the event of a trial. Nor can we extead, by implication, the meaning of the words "no attorney shall be recognized in the presentation or adjudication of a claim" so as to make criminal important preliminary investigation and preparatory work. The *presentation* of the claim evidently refers to the mere clerical filling of the necessary papers, and the word *adjudication* evidently refers to a trial in the court of law where a fee is limited to 5%. There is no express prohibition against an attorney receiving any fee in investigation work. And in this case, the petitioner was not recognized "in the presentation of the claim." The form was actually presented by the beneficiary. The language plainly refers to the physical filing of the form. Its use in the same sentence with "adjudication" in case of trial establishes this fact.

The language in the statute making criminal a charge of more than $3.00 "except as herein provided" must be construed to applying to charges for the clerical filling in of the form of compensation in case of suit therein set forth.

> "The language 'no * * * attorney shall be recognized in the *presentation* or *adjudication* of claim under Articles 2, 3 and 4"

except that upon suit the Court may allow 5% of the amount recovered, must be also construed to

refer to *presentation* of an affidavit and *adjudication* in case of legal proceedings in court. The Circuit Court of Appeals says Tr., folio 297:

> "in his negotiations with the Bureau he must have been recognized as an attorney in the presentation of her claim, or his services could effect nothing. If he was so recognized, it was in the face of the statute and he can recover nothing for services which he is forbidden to render."

It is, furthermore, significant that the trial Judge permitted a sum to be charged for traveling expenses and disbursements in addition to the $3.00 prescribed by the statute (Tr., fol. 260). No such traveling expenses and disbursements were "herein provided" within the statute, but the Judge found little difficulty in giving the statute, in this particular, a reasonable construction.

IV.

THE CONTRAST IN THE WORDING OF THE PROHIBITIONS WITH RESPECT TO EMPLOYMENT AND COMPENSATION OF ATTORNEYS CONSTRUED IN PRIOR STATUTES AND THE STATUTE UNDER WHICH THE PETITIONER WAS CONVICTED, CLEARLY INDICATES THAT THERE WAS NO CRIMINAL PROHIBITION AGAINST PETITIONER'S CHARGE FOR PRELIMINARY INVESTIGATION WORK.

The contrast between the sections is clearly established by a reference to the prior sections dealing with compensation. Different restrictions upon the employment and compensation of attorneys are

contained in the Act under consideration and prior statutes.

Under the Act of June 12th, 1917, 40 Stat., page 102, Section 8 of that Act, provides as follows:

> "Sec. 8. That there is hereby added to such Act a new section to be known as Section five a, to read as follows:
>
> 'Sec. 5a. No claim agent or attorney shall be entitled to receive any compensation whatever for services in the collection of claims against the Bureau of War Risk Insurance for death, personal injury, or detention, except when proceedings are taken in accordance with section five in a district court of the United States, in which case the Judge shall, as a part of his determination and order, settle and determine the amount of compensation not to exceed ten per centum of amount recovered, to be paid by the claimant on behalf of whom such proceedings are instituted to his legal adviser or advisers, and it shall be unlawful for any lawyer or other person acting in that behalf to ask for, contract for, or receive any larger sum than the amount so fixed.'"

Under this section no compensation whatever was permitted for any services in the collection of claims except in case of suit. Under the Act of October 6th, 1917, these provisions relating to compensation were made less stringent. We note in Section 13 the authority given to the Director of War Risk Insurance to adopt reasonable and proper rules to govern the matter of compensation to be paid to claim agents subject to certain limitations. In Section 405 there is a further statutory restriction upon cases brought in the United States District Court. There is further a provision that

> "No other compensation or fee shall be charged or received by any person except as such as may be authorized by the Commissioner in regulations to be promulgated by him."

Section 405 was expressly abolished by Section 2 of the Act of May 20th, 1918, under which this prosecution was brought.

We therefore agree with the observations of Judge Baker in *United States vs. Rodgers, supra*, when he says:

> "It is enlightening to contrast the language of section 10264 with the language of 10257. In the latter statute the language is clear. It says 'no claim agent or attorney shall be entitled to receive *any compensation whatever for services in the collection of claims* against the Bureau of War Risk Insurance' etc. If Congress had intended a similar inhibition in 10264 it is certain that it would have used the same similar, or other apt language. It is noteworthy that 10257 was on the statute book when 10264 in its present form was added. The statute limiting charges of attorneys for services in connection with the collection of pensions (8498 of Barnes Code), contains language very similar to that contained in 10257. The language of section 8489 is 'no agent, attorney, or other person engaged in preparing, presenting or prosecuting any claim under the provisions of this act, shall directly or indirectly contract for, demand, receive, or retain for such services in preparing, presenting or prosecuting such claim a sum greater than $10.00' etc. In *United States vs. Frisbie*, 157 U. S. this statute is construed and applied. One has

only to read 8489 and 10257 and contrast them with 10264 to conclude that the intention of Congress in the former sections was altogether different from the intention of Congress in 10264."

V.

THE INCONSISTENT CHARGES TO THE JURY OF THE TRIAL JUDGE FURTHER ILLUSTRATE HIS ERRORS IN CONSTRUING THE TRUE MEANING OF THE STATUTE.

The difficulty in ascertaining the true meaning of this statute is best evidenced by the difficulties in its administration. In this very case, the trial Judge was uncertain as to what acts were prohibited. The Judge first charged that no greater sum than $3.00 could be charged in any case. Then he instructed the jury that they should find the defendant not guilty, if they found that he made no charge for the preparation and presentation of an affidavit. He then again charged that he could not make a greater charge than $3.00 for any work he did. For example at Tr. fol. 261, he says:

> "Therefore, to charge in this case more than three dollars was forbidden for the work which the attorney did, outside of his traveling expenses and disbursements, in the face of the statute."

And again at Tr., fol. 263:

> "Mr. Serri: I would like to have your Honor charge there is no evidence if they do not believe that he made any charge for the prepara-

tion and presentation of the affidavit and that they are to return a verdict for the defendant.

The Court: Granted."

And again at Tr., fols. 265, 266, 267:

"The Court: Gentlemen of the Jury: I have this communication from your foreman: 'Are we to understand the work performed by the defendant prior to filling in of affidavit, as part of the work covered by law in making out application, or a separate charge? (signed) John H. Bruning, Foreman.'

I charge you that the defendant could lawfully make no charge for any work he did in excess of three dollars. The indictment alleges in the first count that he charged and received $1,500 for services performed in the preparation and presentation of the affidavit to the Veterans' Bureau, and in the second count that he solicited $500 for services in such preparation and presentation. To find him guilty on either count he must be found to have charged or solicited more than three dollars for the preparation and presentation of the affidavit, because the charge which he is required to meet under the terms of the indictment as drawn, is soliciting more than the lawful amount for the preparation and presentation of the affidavit. Is that clear to you now? The Foreman: Yes.'"

We submit these rulings cannot be reconciled and are inconsistent and contradictory.

And the jury's verdict conclusively establishes that it was under a misapprehension as to the meaning of the law as charged by the Court. It found a verdict of guilty on the first count of the indictment, and returned a verdict of not guilty on the second.

The inconsistency of such findings is apparent. If the defendant was guilty of accepting a larger sum than $3.00 for the preparation and filing of the papers, he was necessarily guilty also of soliciting a greater sum than $3.00, which petitioner admitted. The finding of the jury of guilty on the first count and not guilty on the second count illustrates the confusion which resulted in the minds of the jury from the erroneous charges of the trial Judge.

VI.

THE CONSTRUCTION OF THE TRIAL JUDGE AND THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT DECLARING AS CRIMINAL THE RECEIPT OF A LARGER SUM THAN $3.00 FOR ALL LEGAL SERVICES, OF WHATEVER EXTENT AND WHATEVER NATURE, INDEPENDENT AND SEPARATE FROM THE MERE FILLING OUT OF THE AFFIDAVIT OF CLAIM AND ITS PHYSICAL PRESENTATION IS A VIOLATION OF THE PETITIONER'S CONSTITUTIONAL RIGHTS UNDER THE FIFTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES. SUCH AN EXERCISE OF POWER BY CONGRESS IS AN ARBITRARY AND UNREASONABLE RESTRICTION UPON AN ATTORNEY'S RIGHT TO ADEQUATE COMPENSATION FOR HIS PROFESSIONAL SERVICES. THE PETITIONER IS NOT SEEKING TO COLLECT A BOUNTY, GRATUITY, GIFT, OR PENSION; BUT IS ENFORCING A RIGHT ARISING UNDER A CONTRACT BASED UPON A CONSIDERATION PAID BY THE INSURED.

The construction of the trial Judge and the Circuit Court of Appeals for the Second Circuit, limiting the compensation of an attorney to $3.00 irre-

spective of the extent, nature, and utility of his professional services violates his constitutional rights under the Fifth Amendment of the Constitution of the United States. It destroys the constitutional protection afforded an attorney engaging in honest and useful work for compensation. No case decided by this Court restricts an attorney to so meagre a fee as $3.00 for elaborate professional services. Nor does any adjudication of this Court sustain the constitutionality of legislation which restricts to a nominal compensation the enforcement of a claim arising under a contract entered into between the insured and the United States and totally different from pensions, bounties, gratuities, and other donations resulting from the grace of the government and not founded upon contractual obligation.

VII.

IT IS RESPECTFULLY SUBMITTED THAT THE WRIT OF CERTIORARI SHOULD BE GRANTED AND THE CAUSE REVIEWED BY THIS COURT.

Dated, New York, January 21st, 1925.

BENJAMIN S. KIRSH.
Attorney for Petitioner.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1924.

JOSEPH P. MARGOLIN,
Plaintiff,

—against—

UNITED STATES OF AMERICA,
Respondent.

SIR:

PLEASE TAKE NOTICE, that the annexed petition for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit will be submitted to the Supreme Court of the United States at the opening of court on the 2 day of February, 1925, or as soon thereafter as counsel may be heard.

Dated, New York, January 21st, 1925.

BENJAMIN S. KIRSH,
Attorney for Petitioner.

To:

HON. JAMES M. BECK,
The Solicitor General of the United States.